IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 850 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT --- Appellant

Versus

ANANTRAI NATVERLAL ACHARYA --- Respondent

Appearance:
ST MEHTA, APP for Petitioner
MR HARIN P RAVAL for Respondent

CORAM : MR.JUSTICE H.R.SHELAT
and
MR.JUSTICE J.R.VORA

Date of decision: 29/02/2000

ORAL JUDGEMENT (Per: H.R. Shelat, J.)

1. This Appeal is directed against the judgment and order dated 23rd June, 1992, passed by the Special Judge, Bhavnagar, in Special Case No. 3 of 1987, acquitting the respondent of the offences punishable under Section 5(2) of the Prevention of Corruption Act and Section 161 of the Indian Penal Code.

2. The facts, in order to appreciate the rival contentions, may in brief be stated. Nathubha Andubha, the uncle of the complainant Bahadursinh Lalubha, and Dashratsinh Lalubha, his younger brother, both had applied for a loan for a cart and a kiln. The same were to be sanctioned by the Taluka Development Officer, Talaja. Nathubha, the uncle of complainant, had asked him to go to the panchayat office and inquire about the out-come of the applications for loans. On 8th August, 1985, Bahadursinh Lalubha the complainant had gone to the Office of Talaja Taluka Panchayat. He met the respondent, who was at that time serving as Taluka Development Officer. On inquiry the respondent made it clear that those applications could be passed only if something was paid to him for showing favour and when a further query was made as to what amount he would have to pay, he was told to pay Rs. 400/- to 500/- . Khimrajsinh his uncle was serving as Talati-cum-Mantri, his reference was also made in order to see that the work could be got done without any illegal payment being made. The respondent firmly and curtly said that reference or allusion to any one would not be effectual, unless the payment made, nothing could be done in the matter. The respondent was also insisted for such illegal payment latest by the evening on that day. The vexed complainant was not willing to pay. He, therefore, decided to file a complaint with ACB Office at Bhavnagar. He was not having the amount of Rs.400/-. He therefore, borrowed the same from Ghanshyambhai Dalpatbhai and went to ACB Office, Bhavnagar, where Mr. Trivedi, P.I. was present. On being informed, Mr. Trivedi recorded the complaint against the respondent. The panchas were then called and appraised about the trap to be laid and formalities to be undergone. The complainant in the presence of the panchas paid three currency notes each of the denomination of Rs. 100/- and two notes each of Rs. 50/- denominations. In all he paid Rs.400/- to Mr. Trivedi, under whose instructions, the Police Head Constable applied Anthracene powder and put the same in the pocket of complainant with the instruction not to touch the same until demand was made and to pay on demand. The Panch No.1 was directed to remain present all throughout with the complainant and to carefully hear

the talk, that might take place and watch the happenings. The complainant was also asked to give a signal by coughing - sound or a hoarse-voice after the respondent accepted the amount. The first part of the panchnama was drawn, and at 6.30 p.m. the complainant, panchas, Mr. Trivedi and members of the raiding party left Bhavnagar for Talaja. At 8.30 p.m. they reached Talaja. The members of the raiding party were deployed at different places from where they were able to hear the coughing sound, which was to be regarded to be the signal. The complainant and panch No.1 went to the residential quarter of the respondent, but the respondent was not available, as he had gone out of station for his official work. They therefore waited in the nearby place, and again went to the residential quarter of the respondent after knowing that the respondent had come back from the District. The complainant and panch No.1 then went into the house of the respondent. The respondent demanded the amount for showing favour unjustly qua the applications for the loan pending. The complainant then paid the amount of Rs. 400/-, and coming out gave the signal by coughing sound as per the understanding. The members of the raiding party deployed at different places then rushed to the place and Mr. Trivedi, Investigation Officer introduced himself. He knew that respondent had accepted amount and put the same in the suit-case. From the suit-case, the notes were seized. The numbers of the currency notes were tallying with the numbers mentioned in the first part of the panchnama. After undergoing necessary formalities, the appellant was arrested, further investigation was taken on hand and charge sheet against the respondent at the conclusion of the investigation was filed in the Court of the Special Judge at Bhavnagar. Against the respondent, charge (Exh.5) was framed, to which he pleaded not guilty. The prosecution then led necessary evidence. While appreciating the evidence, learned Special Judge reached the conclusion that the prosecution had failed to establish the charge. He, therefore, acquitted the respondent. It is against that judgment and order acquitting the respondent, the present Appeal is filed by the State.

3. In the case on hand, the respondent advancing the defence before the lower court contended that he had given the loan of Rs.400/- to Khimrajsinh, Talati-cum-mantri, serving under him and the uncle of the complainant. When the complainant met him, he requested to see that amounts of the loan were paid him back. The complainant was to see him in the evening in that connection, as he had assured that in the evening he would again see him to make the payment of loan amount.

In the evening therefore as per the talk in the morning the complainant had gone to his place to make the payment of the loan amount. The respondent has therefore admitted the acceptance of the amount, but according to him, it was not the bribe amount, but amount of the loan which he had advanced to Khimrajsinh.

4. Mr. S.T. Mehta, learned APP contends that the learned Judge fell into error in appreciating the evidence and reaching the conclusion that the case in defence was plausible, while the case of the prosecution was because of certain infirmities and discrepancies, suspicious. In fact, the evidence was crystal clear to establish the charge leaving no room to doubt. The case about the loan was after thought so as to screen himself from the liability. As the lower court proceeded on a wrong track assigning illogical reasons, the order under challenge is required to be interfered with.

5. In the case on hand, Mr.Trivedi, the Police Officer has investigated into the offence right from the moment he recorded the FIR till the charge sheet was presented before the court. When he has carried out the raid, investigated into the offence, taken the search and seized the currency notes and thereafter also recorded the statements of the witnesses and carried out necessary investigation, the contention advanced on behalf of the respondent that the same would reflect the credibility of the prosecution case, cannot be brushed aside. As everything is done by the Investigating Officer, he would like to collect such materials and see that the result of the case is in favour of the prosecution. As everything is done by Mr.Trivedi, the credibility of the prosecution case is not beyond impeachment, in view of the decision of the Supreme Court in BHAGWAN SINGH vs. STATE OF RAJASTHAN, AIR 1976 S.C. 985. In view of the matter the prosecution must on that count fail. But apart from that aspect of the case, the prosecution has to, in our view retreat.

6. In the case of HARI DEV SHARMA vs. STATE (DELHI ADMINISTRATION), AIR 1976 S.C. 1489, it is made clear that demand and acceptance being the vital part of the requirement are to be proved clearly and if one of them is not proved, the offence cannot be said to have been constituted; and conviction, if inflicted, cannot be sustained. In the case on hand, acceptance of the amount as per the case in defence, is no doubt admitted. Whether it was the bribe amount or the loan amount, has to be decided, dissecting the merits of the rival cases qua the demand made. The learned Judge has discussed the

evidence qua demand and assigning logical reasons, he found that the case of the prosecution with regards to the demand was not acceptable. We generally agree with the reasonings of the learned Judge and so it is not necessary to restate the same. However, we will in short consider the evidence from the different angle qua demand. The evidence of the complainant reveals that the amount to be paid by way of illegal gratification was not fixed, which as per alleged talk ranging between Rs.400/to 500/-. There was no reason for the complainant to go to respondent with Rs.400/- only the loan amount. He had to take with him Rs.800/- or more. If for some reason he could not collect loan amount, he was required to take with him Rs.500/- or more. He, however, goes to the respondent's residence taking the amount of Rs.400/only which is suggestive of the fact that he had gone there to repay the amount of loan of Rs. 400/- advanced to Khimrajsinh.

7. It is pertinent to note that the complainant in his cross-examination has admitted that in the morning when he met the respondent it was made clear to him that in the evening when he would be going back to see him, he would bring the loan amount of Rs.400/- from Khimrajsinh and he had assured that he would be bringing the loan amount from Khimrajsinh. He had hence gone there with the loan amount. Such evidence is not assailed by the prosecution putting necessary questions in the Re-examination, if required, taking permission of the court. The prosecution has thereby not preferred to assail such statement of the complainant. If the party does not assail the statement damaging his interest or case; the same should be deemed to have been accepted. Consequently, the case in defence comes to be more probable than the case advanced by the prosecution. The contention that the case of the prosecution is not free from doubt must find favour.

8. As per the case of the prosecution the complainant had borrowed the sum of Rs.400/- from Shri Ghanshyambhai D. Bhatt as he did not have that much amount on hand and paid to Mr. Trivedi the P.I. for laying trap. It may be mentioned that Ganshshyambhai D.Bhatt (Exh.15) does not support such fact saying that he did not advance Rs.400/-. On one side Ghanshyambhai does not support and on the other side the complainant comes forward with the say that did not have Rs. 400/- so as to pay at the time of trap. He however paid Rs.400/to Mr. Trivedi as trap-money. Khimrajsinh is not examined for the reason best known to the prosecution. What can therefore be deduced is that the complainant

took the sum of Rs.400/- from Khimrajsinh and taking the same he went to ACB Office and as planned, lodged the complaint so as to rope-in the respondent.

9. Before the raid, the panch No.1 was asked to remain with the complainant and carefully hear the talk that might take place and watch the happenings. When depositions of the complainant as well as Panch, (Exh.8 and 10) are read together, it appears that Bahadursinh the complainant had gone into the house of the respondent alone, while the panch remained outside near the window. According to the panch, he was in a position to hear the talk and see the exchange of notes being made through the window. His such evidence cannot be accepted because the complainant has made it clear that the window through which the panch is alleged to have seen, was kept closed and on that day also the window might be closed. It is also not made clear that the panch was at the audible distance. It follows from such evidence that it was not possible for the panch No.1 to see or hear. The complainant as discussed above supports the defence. In view of such facts it is not safe to accept the evidence of the panch.

10. It may be mentioned that, according to the prosecution, on 23rd May, 1985 and 24th May, 1985, applications for loan were given, relating to which the enquiry was made by the complainant. The day on which the applications are said to have been given the respondent was not serving as TDO at Talaja. By the order dated 3rd June, 1985, he was transferred to Talaja and he took over his charge at Talaja on 20th June, 1985. He was, therefore not knowing about the pendency of these loan applications after he took the charge. It is also pertinent to note that on those two applications, no entry in the inward register is made, and there is also no endorsement about the receipt of these two applications by the concerned clerk till the incident happened. The respondent had not known about the applications. He only came to know when the trap was laid at his place because on the previous day someone had left the file at his place in his absence and his wife had kept in another bag. In that file the applications were kept. At the time of trap from that another bag those applications were found and respondent knew about the same. There is, therefore, reasons to believe as contended by the learned Advocate for the respondent that to involve the respondent wrongly, the case was planned and the trap was laid at his place under the guise of repayment of the loan amount. Such facts on record show that the case about the demand having been made qua the

loan applications and showing favour is not acceptable. The case about demand is thus doubtful. When the demand about bribe being the vital part is not proved, the offence of taking bribe cannot be said to have been constituted. On such count therefore the prosecution fails. The learned Special Judge was, therefore, perfectly right in acquitting the respondent.

11. For the aforesaid reasons, we see no merit in the appeal. The appeal is, therefore, liable to be dismissed and is dismissed accordingly. Bail bonds shall stand cancelled.

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